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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,403	12/05/2003	Wilhelm Fischbach	20020/10012	9746

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EXAMINER

JOHNSON, STEPHEN

ART UNIT	PAPER NUMBER
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3641

DATE MAILED: 12/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/728,403

Applicant(s)

FISCHBACH ET AL.

Examiner

Stephen M. Johnson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 19,22 and 23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18,20 and 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-23 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 June 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>6/6/2005</u> . | 6) <input type="checkbox"/> Other: _____ |

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1. Applicant's election with traverse of the group I invention in the reply filed on 10/31/2005 is acknowledged. The traversal is on the ground(s) that the inventions must be independent and distinct and that no serious burden is present. These arguments are not convincing for the following reasons. (1) The requirement of independent and distinct is considered to be independent or distinct (see MPEP 806, 806.05, and 808). Since the second grouping contains features directed to a cover in combination with a firearm containing a breech block, this is considered to be a **patentable distinction** from a dust cover independent of a firearm containing a breech block. (2) With regard to the issue of serious burden, since the searches for each of these different inventions are clearly different, the issue of serious burden is inherently met. Further, the issue of serious burden goes directly to quality of examination. If enough time is not provided to search all of the appropriate places, the resultant product may not be patentable over all pertinent prior art. This should be the most important consideration when determining the issue of serious burden. (3) The change in dependency of claims 22 and 23 does not effect the issue of additional searching directed to a firearm with associated moving breechblock as it interacts with the dust cover.

The requirement is still deemed proper and is therefore made FINAL.

Claims 19 and 22-23 are withdrawn from consideration as being directed to a non-elected invention. Claim 19 contains features directed to a dust cover in combination with a firearm with associated recoiling breechblock.

Claims 1-18 and 20-21 read on the elected invention and an action on these claims follows.

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2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the crimped portion; 2 openings with respective dust covers; and 3 magnetic pins must be shown or the feature(s) canceled from the claim(s). **No new matter should be entered.**

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The newly proposed sheets of drawings directed to figs. 2 and 3 are of more detail than can be supported by the application as originally filed with regard to the size and location of items 15, 17, 22, 7, and 13. Consequently, figs. 2 and 3 are disapproved and not entered.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-2, 18, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by

Kamen et al. (012).

Kamen et al. (012) disclose a firearm or associated housing and cover arrangement comprising :

- | | |
|---------------------------|---------------------|
| a) a housing; | 118 |
| b) a dust cover; | 114 |
| c) a magnetic lock; | 146, 148 |
| d) a plastic housing; and | col. 3, lines 26-36 |
| e) a magnetic strip. | col. 7, lines 50-59 |

6. Claims 1-2, 18, and 20-21 are rejected under 35 U.S.C. 102(b) as being anticipated by O'Reilly (537).

O'Reilly (537) discloses a firearm or associated housing and cover arrangement comprising :

- | | |
|---------------------------|---------------------|
| a) a housing; | 22 |
| b) a dust cover; | 23 |
| c) a magnetic lock; | col. 3, lines 43-47 |
| d) a plastic housing; and | col. 3, line 1 |
| e) a magnetic strip. | 31 |

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-6, 8-16, 18, and 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson et al. (114) in view of either Meyer et al. (450) or Reichert et al. (464) or Reed et al. (383).

Anderson et al. disclose a firearm or associated housing and cover arrangement comprising :

- | | |
|------------------------------------|----------------------|
| a) a housing; | 1 |
| b) a dust cover; | 2 |
| c) a magnetic lock; | see fig. 3 |
| d) an embedded magnetic strip; and | 12 |
| e) a plurality of rods or pins. | 3, see figs. 1 and 4 |

Anderson et al. apply as recited above. However, undisclosed is a housing comprised of a substantially non-magnetic material. Meyer et al. (abstract) ; Reichert et al. (col. 3, lines 38-42) ; and Reed et al. (col. 3, lines 27-32) each teach a housing comprised of a substantially non-magnetic material. Applicant is substituting one type of housing material for another in an analogous art setting. It would have been obvious to a person of ordinary skill in this art at the time of the invention to apply the teachings of Meyer et al., Reichert et al., or Reed et al. to the Anderson et al. housing and cover arrangement and have a housing of a particular material type.

9. Claims 1-3, 5-7, 10-13, 15, 18, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mark et al. (920) in view of either Meyer et al. (450) or Reichert et al. (464) or Reed et al. (383).

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Mark et al. disclose a firearm or associated housing and cover arrangement comprising :

- | | |
|------------------------------------|------------|
| a) a housing; | 1 |
| b) a dust cover; | 2 |
| c) a magnetic lock; | see fig. 6 |
| d) an embedded magnetic strip; and | 3, 5 |
| e) a plurality of rods or pins. | 13, 16 |

Mark et al. apply as recited above. However, undisclosed is a housing comprised of a substantially non-magnetic material. Meyer et al. (abstract) ; Reichert et al. (col. 3, lines 38-42) ; and Reed et al. (col. 3, lines 27-32) each teach a housing comprised of a substantially non-magnetic material. Applicant is substituting one type of housing material for another in an analogous art setting. It would have been obvious to a person of ordinary skill in this art at the time of the invention to apply the teachings of Meyer et al., Reichert et al., or Reed et al. to the Mark et al. housing and cover arrangement and have a housing of a particular material type.

10. Claims 1 and 17-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Needham et al. (407).

Needham et al. (407) discloses a firearm or associated housing and cover arrangement comprising :

- | | |
|-------------------------|---------------------|
| a) a housing; | 10 |
| b) a dust cover; | 11 |
| c) a magnetic lock; and | col. 3, lines 42-68 |
| d) a spring. | col. 4, lines 33-35 |

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11. Applicant's arguments with respect to claims 1-18 and 20-21 have been considered but are moot in view of the new ground(s) of rejection.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen M. Johnson whose telephone number is 571-272-6877 and whose e-mail address is (Stephen.Johnson@uspto.gov). The examiner can normally be reached on Tuesday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 571-272-6873. The Central FAX phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 800-786-9199.



STEPHEN M. JOHNSON
PRIMARY EXAMINER

Stephen M. Johnson
Primary Examiner
Art Unit 3641

SMJ
December 6, 2005